

UNITED STATES OF AMERICA
before the
COMMODITY FUTURES TRADING COMMISSION

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Victoria Terekhina, *
Complainant, *
*
v. *
*
Capital Market Services, LLC, *
D/B/A CMS Forex, *
Respondent. *
*

OFFICE OF PROCEEDINGS
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Docket No. 07-R017

ORDER OF DISMISSAL

This matter was filed with the Commission on December 27, 2006. Complainant alleges that she invested \$35,000 in an account with Respondent for the purpose of trading currencies. Complainant avers that she devised her own system to trade currency, and that she utilized Respondent's VT Trader platform to enter her trades. Initially, her trades were modestly successful, and she nearly doubled her investment in a short while. And then losses occurred. Complainant argues that the losses were caused by a flaw in the VT trader. The flaw, she explains, permitted the closing of losing positions. Complainant maintains that "I only close profitable positions." Unfortunately, there is an element of risk in trading currency, just as there is risk in shooting craps, and in pulling the handle on a slot machine. Complainant wants her money back, plus the "Value Added" for the work she performed. She calculates that her work was worth \$232,870. She also stated her intention to calculate damages resulting from "Missed Opportunities."

In its Answer and Motion to Dismiss, Respondent avers that the VT Trader platform requires four distinct actions by the customer to close out a position. Complainant has entirely failed to reply to Respondents' allegation that only her actions in a multi-step closure process could result in an order to close her trades.

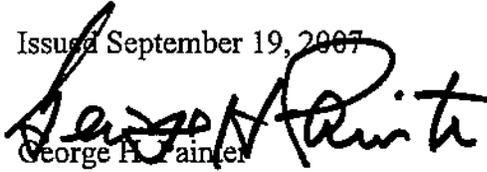
Respondent CMS Forex provides substantial evidence in support of its allegation that only Claimant's multiple actions could have closed each of her specific trades. Respondent provides a graphic report of the four steps required for a trader to close a position: (1) the highlighting of the specific trade; (2) the choice of "close" from a menu of options; (3) trader confirmation in a third window indicating the amount of the position (in lots), the price, and the range; and (4) trader confirmation in a second window that allows the trader to "ok" or cancel the previously defined closure. Respondent's description of the process is supported by the affidavits of its data management and system development officers, as well as the affidavit of the Applications Manager of Visual Trading Systems, LLT.

Pursuant to Rule 12.310(a), 17 C.F.R. § 12.310(a), applicable to formal decisional proceedings, a party may file a motion for summary disposition, including a statement of the material facts as to which the moving party contends that there is no genuine issue. An adverse party may not rest upon the mere allegations, but is required to serve and file a responsive statement setting forth the material facts as to which he contends a genuine issue exists. While Complainant's Motion for Summary Judgment appears to be filed in response to CMS Forex's allegations that she controlled the closure of trades for her account, Complainant persists in her original allegations without responding to the central concern. Terekhina does not assert that her trades were closed without her compulsory participation. .

This proceeding fails to state a valid cause of action, and it is without merit. Respondent's Motion for Summary Disposition is GRANTED and this proceeding is DISMISSED WITH PREJUDICE.

So ordered.

Issued September 19, 2007



George H. Painter
Administrative Law Judge